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10/071,442	02/06/2002	Blaine D. Gaither	10018453-1	2888
22879 7590 08/31/2010 HEWLETT-PACKARD COMPANY Intellectual Property Administration 3404 E. Harmony Road Mail Stop 35 FORT COLLINS, CO 80528				
EXAMINER				
LASTRA, DANIEL				
ART UNIT		PAPER NUMBER		
3688				
NOTIFICATION DATE		DELIVERY MODE		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/071,442

Applicant(s)

GAITHER, BLAINE D.

Examiner

DANIEL LASTRA

Art Unit

3688

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 May 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11, 14, 17-22, 26-28 and 33-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11, 14, 17-22, 26-28 and 33-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. Claims 1-11, 14, 17-22, 26-28 and 33-35 have been examined. Application 10/071,442 (SYSTEM FOR OFFERING SERVICES USING NETWORK OF UNOWNED COMPUTERS) has a filing date 02/06/2002.

Response to Appeal Brief

2. In response to Final Office Action dated 01/14/10, the Applicant filed an Appeal Brief. In view of the Appeal Brief filed on 05/28/10, PROSECUTION IS HEREBY REOPENED.

To avoid abandonment of the application, appellant must exercise one of the following two options:

- (1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,
- (2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-11, 14-22, 26-28, 33-35 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Based on Supreme Court

precedent, a method/process claim must (1) be tied to a particular machine or apparatus (see at least *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780, 787-88 (1876)) or (2) transforms a particular article to a different state or thing (see at least *Gottschalk v. Benson*, 409 U.S. 63, 71 (1972)). A method/process claim that fails to meet one of the above requirements is not in compliance with the statutory requirements of 35 U.S.C. 101 for patent eligible subject matter. Here the claims fail to meet the above requirements because the steps are neither tied to a particular machine or apparatus nor transforms a particular article to a different state or thing. An apparatus is not performing the method steps.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 1-11, 14, 17-22, 26-28 and 33-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Papalia (US 7,430,459) in view of Jones (US 2002/0198929).

Claim 1, Papalia teaches:

A method of utilizing a collective processing capability of a plurality of power machines after the power machines have been sold to purchasers by a vendor, the method comprising:

entering into a plurality of agreements, each of which is between the vendor and a different one of the purchasers, wherein the agreements specify that the vendor retains a right to use processing resources of the corresponding power machines after the sale of the computers (see col 5, lines 20-45); conveying, subject to said agreements, the plurality of the power machines to said purchasers (see col 5, lines 20-45);

and using, according to the agreements, a network of the plurality of power machines to provide a service that provides the vendor with a commercial benefit, wherein using the network of the plurality of power machines includes employing the retained processing resources of the power machines to perform the service (see col 5, lines 20-45; col 6, lines 27-45).

Papalia does not expressly mentioned that said power machines are computers. However, Jones teaches a system where a master server divides a large file into several small pieces and then downloads those file pieces to client machines, where these client machines function as peer to peer servers and where said master server keeps track of where said file pieces are located using TCP/IP suite of protocols (see paragraphs 6, 17). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Papalia would modify his invention to provide customers with free computers instead of power machines where a

vendor master server would divide a large file into several small pieces and then downloads those file pieces to said computers, where these computers would function as peer to peer servers and where said master server would keep track of where said file pieces are located using TCP/IP suite of protocol, as taught by Jones in view that Papalia teaches that said power machines includes microcontrollers that are connected to a central server via a computer network, where said central server controls the operation of said power machines via a modem (see Papalia col 3, lines 30-40; col 4, lines 38-65; col 6, lines 27-55) and where said power machines creates a plurality of nodes in a computer network (see Papalia col 6, lines 27-46) and further in view that Papalia teaches that a central server runs diagnostics in each power machines connected to the network and knows which of said machines in said network are in need of attention (see Papalia col 6, lines 10-20).

Claim 2, Papalia teaches:

wherein each one of said plurality of agreements is entered into prior to the sale of a respective said specific one of the computers (see col 8, lines 5-25).

Claim 3, Papalia teaches:

wherein each agreement provides a purchasing incentive to each of the purchasers (see col 6, lines 1-10).

Claim 4, Papalia does not teach:

wherein, in response to a query generated by a first one of the computers and received by a second one of the computers, using the processing

resource of the second one of the computers to send data from the second one of the computers to the first one of the computers, wherein the processing resource of the second one of the computers used is the processing resource retained by a corresponding one of the agreements. However, Jones teaches a system where a master server divides a large file into several small pieces and then downloads those file pieces to client machines, where these client machines function as peer to peer servers and where said master server keeps track of where said file pieces are located using TCP/IP suite of protocols (see paragraphs 6, 17). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Papalia would modify his invention to provide customers with free computers instead of power machines where a vendor master server would divide a large file into several small pieces and then downloads those file pieces to said computers, where these computers would function as peer to peer servers and where said master server would keep track of where said file pieces are located using TCP/IP suite of protocol, as taught by Jones in view that Papalia teaches that said power machines includes microcontrollers that are connected to a central server via a computer network, where said central server controls the operation of said power machines via a modem (see Papalia col 3, lines 30-40; col 4, lines 38-65; col 6, lines 27-55) and where said power machines creates a plurality of nodes in a computer network (see Papalia col 6, lines 27-46) and further in view that Papalia teaches that a central server runs diagnostics in each power machines connected to the network and knows which of said machines in said network are in need of attention (see Papalia col 6, lines 10-20).

Claim 5, Papalia does not teach:

wherein said data comprises an Internet web page. However, Jones teaches a system where a master server divides a large file into several small pieces and then downloads those file pieces to client machines, where these client machines function as peer to peer servers and where said master server keeps track of where said file pieces are located using TCP/IP suite of protocols (see paragraphs 6, 17). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Papalia would modify his invention to provide customers with free computers instead of power machines where a vendor master server would divide a large file into several small pieces and then downloads those file pieces to said computers, where these computers would function as peer to peer servers and where said master server would keep track of where said file pieces are located using TCP/IP suite of protocol, as taught by Jones in view that Papalia teaches that said power machines includes microcontrollers that are connected to a central server via a computer network, where said central server controls the operation of said power machines via a modem (see Papalia col 3, lines 30-40; col 4, lines 38-65; col 6, lines 27-55) and where said power machines creates a plurality of nodes in a computer network (see Papalia col 6, lines 27-46) and further in view that Papalia teaches that a central server runs diagnostics in each power machines connected to the network and knows which of said machines in said network are in need of attention (see Papalia col 6, lines 10-20).

Claim 6, Papalia teaches:

A method of utilizing a collective processing capability of a plurality of power machines after the power machines have been sold to purchasers by a vendor, the method comprising:

entering into a plurality of agreements, each of which is between the vendor and a different one of the purchasers, wherein the agreements specify that the vendor retains a right to use processing resources of the corresponding power machines after the sale of the power machines (see col 5, lines 20-45); conveying, subject to said agreements, the plurality of the power machines to said purchasers (see col 5, lines 20-45);

and using a network of the plurality of power machines to provide a service that provides the vendor with a commercial benefit (see col 6, lines 27-65), wherein entering into the plurality of agreements further comprises entering into the plurality of agreements to retain a right to use storage areas in the respective power machines (see col 5, lines 20-45),

wherein the network comprises a plurality of nodes including the power machines, and wherein one of the nodes is a vendor node, the method further comprising:

the vendor node maintaining a list of all of the power machines connected thereto (see col 6, lines 27-65) but does not expressly teach along with respective IP addresses for the corresponding computers, and information identifying files stored in the respective retained storage areas of the corresponding computers; and in response to a query for a requested file, the vendor node accessing the list to identify

one or more of the computers storing the requested file to enable retrieval of the requested file in response to the query. However, Jones teaches a system where a master server divides a large file into several small pieces and then downloads those file pieces to client machines, where these client machines function as peer to peer servers and where said master server keeps track of where said file pieces are located using TCP/IP suite of protocols (see paragraphs 6, 17). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Papalia would modify his invention to provide customers with free computers instead of power machines where a vendor master server would divide a large file into several small pieces and then downloads those file pieces to said computers, where these computers would function as peer to peer servers and where said master server would keep track of where said file pieces are located using TCP/IP suite of protocol, as taught by Jones in view that Papalia teaches that said power machines includes microcontrollers that are connected to a central server via a computer network, where said central server controls the operation of said power machines via a modem (see Papalia col 3, lines 30-40; col 4, lines 38-65; col 6, lines 27-55) and where said power machines creates a plurality of nodes in a computer network (see Papalia col 6, lines 27-46) and further in view that Papalia teaches that a central server runs diagnostics in each power machines connected to the network and knows which of said machines in said network are in need of attention (see Papalia col 6, lines 10-20).

Claims 7, 18 Papalia does not teach:

wherein the network comprises a plurality of peers, each of which includes a corresponding one of the computers, the method further comprising: configuring each of the peers in the network as a servant that acts as both a client and a server to distribute data between the peers in response to a query generated by one of the peers. However, Jones teaches a system where a master server divides a large file into several small pieces and then downloads those file pieces to client machines, where these client machines function as peer to peer servers and where said master server keeps track of where said file pieces are located using TCP/IP suite of protocols (see paragraphs 6, 17). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Papalia would modify his invention to provide customers with free computers instead of power machines where a vendor master server would divide a large file into several small pieces and then downloads those file pieces to said computers, where these computers would function as peer to peer servers and where said master server would keep track of where said file pieces are located using TCP/IP suite of protocol, as taught by Jones in view that Papalia teaches that said power machines includes microcontrollers that are connected to a central server via a computer network, where said central server controls the operation of said power machines via a modem (see Papalia col 3, lines 30-40; col 4, lines 38-65; col 6, lines 27-55) and where said power machines creates a plurality of nodes in a computer network (see Papalia col 6, lines 27-46) and further in view that Papalia teaches that a central server runs diagnostics in each power

machines connected to the network and knows which of said machines in said network are in need of attention (see Papalia col 6, lines 10-20).

Claim 8, Papalia does not teach:

distributing said query between successive said peers until the query is received by one of the peers having access to said data; and distributing said data between successive said peers until the data is received by said one of the peers that generated the query. However, Jones teaches a system where a master server divides a large file into several small pieces and then downloads those file pieces to client machines, where these client machines function as peer to peer servers and where said master server keeps track of where said file pieces are located using TCP/IP suite of protocols (see paragraphs 6, 17). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Papalia would modify his invention to provide customers with free computers instead of power machines where a vendor master server would divide a large file into several small pieces and then downloads those file pieces to said computers, where these computers would function as peer to peer servers and where said master server would keep track of where said file pieces are located using TCP/IP suite of protocol, as taught by Jones in view that Papalia teaches that said power machines includes microcontrollers that are connected to a central server via a computer network, where said central server controls the operation of said power machines via a modem (see Papalia col 3, lines 30-40; col 4, lines 38-65; col 6, lines 27-55) and where said power machines creates a plurality of nodes in a computer network (see Papalia col 6, lines

27-46) and further in view that Papalia teaches that a central server runs diagnostics in each power machines connected to the network and knows which of said machines in said network are in need of attention (see Papalia col 6, lines 10-20).

Claim 9, Papalia teaches:

wherein said network includes said power machines used by entities not in privity with the vendor (see col 5, lines 20-45). Papalia does not expressly teach that said power machines are computers. However, the same argument made in claim 1 regarding this missing limitation is also made in claim 9.

Claims 10, 19 Papalia does not teach:

wherein retaining the right to use said processing resources comprises retaining the right to use low-priority processor cycles of the corresponding computers to effect said service. However, Jones teaches a system where client computers share their computer resources such as CPU limits, memory limits with a master server in order to help said master server offload demands from their master Internet server (see paragraphs 30-31). Therefore, the same argument made in claim 1 regarding this missing limitation is also made in claims 10, 19.

Claims 11, 20, Papalia does not teach:

wherein retaining the right to use said processing resources comprises retaining the right to use a predetermined amount of processor time within a fixed interval of time in each of the computers to effect said service. However, Jones teaches a system where client computers share their computer resources such as CPU limits, memory limits with a master server in order to help said

master server offload demands from their master Internet server (see paragraphs 30-31). Therefore, the same argument made in claim 1 regarding this missing limitation is also made in claims 11, 20.

Claims 14, 21-22, Papalia teaches:

A method of utilizing a collective processing capability of a plurality of devices containing embedded processors, after the devices have been sold to purchasers by a vendor, the method comprising:

entering into an agreement between the vendor and one of the purchasers wherein, with respect to a specific one of the devices to be sold to said one of the purchasers, the vendor retains a right to use a portion of the embedded processor of said specific device after the sale thereof (see col 5, lines 20-45); conveying the specific device to said one of the purchasers, after entering into said agreement (see col 5, lines 20-45);

and using the network to provide a service that provides the vendor with a commercial benefit, wherein providing the service includes employing the retained portions of the embedded processors of the devices in the network (see col 6, lines 27-55). Papalia does not teach repeating the previous two steps until a predetermined minimum number of said devices that are connectable to a network have been sold. However, Jones teaches that it is old and well known in the communication art to determine a predetermined minimum number of computer to create a share network (see paragraph 6). Jones also teaches a system where a master server divides a large file into several small pieces and then downloads those file pieces to client machines,

where these client machines function as peer to peer servers and where subsequent requests from new client machines are then redirected by the master server to the clients which already have the required file pieces (see paragraph 6). Therefore, the same argument made in claim 1 regarding this missing limitation is also made in claims 14, 21-22.

Claim 17, Papalia teaches:

wherein entering into the agreements further comprises entering into the agreements to retain a right to use storage areas of the devices, wherein the network comprises a plurality of nodes including the devices, and wherein one of the nodes is a vendor node (see col 5, lines 20-45; col 6, lines 27-65), the method further comprising:

the vendor node maintaining a list of all of the devices connected thereto (see col 6, lines 27-65),

Papalia does not teach along with respective IP addresses for the corresponding devices, and information identifying files stored in the respective retained storage areas of the corresponding devices; and in response to a query for a requested file, the vendor node accessing the list to identify one or more of the devices storing the requested file to enable retrieval of the requested file in response to the query. However, Jones teaches a system where a master server divides a large file into several small pieces and then downloads those file pieces to client machines, where these client machines function as peer to peer servers and where said master server keeps track of where said file pieces are located using TCP/IP suite of protocols (see

paragraphs 6, 17). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Papalia would modify his invention to provide customers with free computers instead of power machines where a vendor master server would divide a large file into several small pieces and then downloads those file pieces to said computers, where these computers would function as peer to peer servers and where said master server would keep track of where said file pieces are located using TCP/IP suite of protocol, as taught by Jones in view that Papalia teaches that said power machines includes microcontrollers that are connected to a central server via a computer network, where said central server controls the operation of said power machines via a modem (see Papalia col 3, lines 30-40; col 4, lines 38-65; col 6, lines 27-55) and where said power machines creates a plurality of nodes in a computer network (see Papalia col 6, lines 27-46) and further in view that Papalia teaches that a central server runs diagnostics in each power machines connected to the network and knows which of said machines in said network are in need of attention (see Papalia col 6, lines 10-20).

Claim 26, Papalia teaches:

wherein entering into the plurality of agreements further comprises entering into the plurality of agreements to retain a right to use secure storage areas in the computers to store data of the vendor (see col 5, lines 20-65).

Claim 27, Papalia does not teach:

wherein retaining the right to use the secure storage areas comprises retaining the right to use virtual environments in the computers for

storing the vendor data. However, the same argument made in claim 1 regarding this missing limitation is also made in claim 27.

Claim 28, Papalia teaches:

wherein entering into the plurality of agreements further comprises entering into the plurality of agreements to run software of the vendor using the retained processing resources of the power machines, the method further comprising: receiving a request from a requestor for the service, wherein the requestor is the vendor or a third party different from the vendor and the purchasers; and running the software on at least one of the power machines in response to the request (see col 6, lines 10-20 "diagnostics"). Papalia does not teach that said power machines are computers. However, the same argument made in claim 1 regarding this missing limitation is also made in claim 28.

Claim 33, Papalia teaches:

wherein employing the retained processing resources of the computers is to perform the service in response to a request of the vendor or a third party different from the vendor and the purchasers (see col 8, lines 5-25).

Claim 34, Papalia teaches:

wherein employing the retained portions of the embedded processors of the devices is to perform the service in response to a request of the vendor or a third party different from the vendor and the purchasers (see col 5, lines 20-45).

Claim 35, Papalia does not teach:

wherein the agreements further specify that the vendor has retained a right to use storage areas of the plurality of power machines, the method further comprising:

a node associated with the vendor receiving a query for requested data; the node responding to the query by accessing information to determine which one or more of the computers in the network contains the requested data in respective one or more retained storage areas; and the node providing information to allow retrieval of the requested data. However, Jones teaches a system where a master server divides a large file into several small pieces and then downloads those file pieces to client machines, where these client machines function as peer to peer servers and where said master server keeps track of where said file pieces are located using TCP/IP suite of protocols (see paragraphs 6, 17). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Papalia would modify his invention to provide customers with free computers instead of power machines where a vendor master server would divide a large file into several small pieces and then downloads those file pieces to said computers, where these computers would function as peer to peer servers and where said master server would keep track of where said file pieces are located using TCP/IP suite of protocol, as taught by Jones in view that Papalia teaches that said power machines includes microcontrollers that are connected to a central server via a computer network, where said central server controls the operation of said power machines via a modem (see Papalia col 3, lines 30-40; col 4, lines 38-65; col 6, lines 27-55) and where said power machines creates a

plurality of nodes in a computer network (see Papalia col 6, lines 27-46) and further in view that Papalia teaches that a central server runs diagnostics in each power machines connected to the network and knows which of said machines in said network are in need of attention (see Papalia col 6, lines 10-20).

Response to Arguments

4. Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL LASTRA whose telephone number is 571-272-6720 and fax 571-273-6720. The examiner can normally be reached on 8:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, JOHN WEISS can be reached on (571) 272-6812. The official Fax number is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/DANIEL LASTRA/
Primary Examiner, Art Unit 3688
August 10, 2010

Art Unit: 3688

/JOHN G. WEISS/

Supervisory Patent Examiner, Art Unit 3688